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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,041	11/06/2003	Anthony Fred Mercurio	66307-291-7	7411

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DYKEMA GOSSETT PLLC  
FRANKLIN SQUARE, THIRD FLOOR WEST  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER
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METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	Application No. 10/702,041	Applicant(s) MERCURIO ET AL.	
	Examiner Daniel S. Metzmaier	Art Unit 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |



### **DETAILED ACTION**

Claims 9-11 are pending.

#### ***Terminal Disclaimer***

1. The terminal disclaimer filed on April 14, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of a patent issuing from 10/288,590 (US Pat 7,053,124) has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim interpretation***

2. The following interpretation is presented for the remaining issues in this Official Office Action. The claims are directed to an aerosol composition prepared from a biliquid foam, an aqueous phase and a propellant. The instant case is a continuation in part of the application of application serial number 10/288,590. The instant application includes the following subject matter not set forth in 10/288,590:

Page 1, last ¶ ;  
Page 2, 1<sup>st</sup> ¶ ;  
Page 7, line 13, to page 9, line 13;  
Examples 11-14, page 14, line 31, to page 16, line 27.

The scope of the instant claim 9 includes subject matter with an effective date of the instant filing date of November 6, 2003 including instant examples 11, 13 and 14 employing carbomer.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Moodycliffe et al, US 6,881,757. Moodycliffe et al (examples and claims) disclose aerosols reading on the claimed compositions. Moodycliffe et al '757 (column 2, lines 31 et seq) discloses the propellant gas is a hydrocarbon gas. Petroleum gas (instant claim 3) is a hydrocarbon gas. Moodycliffe et al '757 (column 4, lines 10 et seq; column 5, line 1 et seq, lines 25 et seq ; and claims) discloses compositions that employ biliquid foam comprising oil soluble materials if about 18, 16 and 0.1 % by weight making up the majority of the biliquid foam, 10 % by weight propellant and the balance water. Said concentrations read on those in instant claim 5. Moodycliffe et al '757 (column 3, line 59 et seq) discloses cationic surfactants and Moodycliffe et al '757 (column 6, lines 22-26) disclose the aerosols form products of surface and air treating compositions including polishes, cleaners, and fragrances. Moodycliffe et al '757 (column 4, lines 38-64) discloses making the aerosols in a pressurized container, which reads on aerosol can as set forth in claim 10.

5. Claim 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Moodycliffe et al, US 6,749,673. Moodycliffe et al '673 is considered cumulative to the above reference and the basis of the rejection is substantially the same. See column 3, lines 56 et seq; column 4, lines 14 et seq; column 5, lines 1 et seq; and claims.



***Allowable Subject Matter***

6. Claims 10-11 are allowed.

***Response to Arguments***

7. Applicant's arguments filed April 14, 2006 have been fully considered but they are not persuasive.

8. Applicants (page 4) assert the rejections under 35 USC 102(e) must be withdrawn in view of the amendments since the claimed subject matter finds support in the original disclosure of the parent application. It is noted that the claimed compositions and methods are open to further disclosure breadth and based on a specification, which contains additional subject matter. The effective date is November 6, 2003. Therefore, the scope of the instant claims remain rejected over the above references.

9. Regarding the presentation of a declaration under 35 USC 1.131, said declaration has yet to be filed at the time of this Office Action.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any




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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Daniel S. Metzmaier  
Primary Examiner  
Art Unit 1712

DSM